

CITY OF SOMERVILLE
HUMAN RIGHTS COMMISSION
RULES OF PROCEDURES
(August 16, 1996)

Practice and Procedure Before the Somerville Human Rights Commission

I. SCOPE

These rules govern the practice and procedure before the Somerville Human Rights Commission (hereinafter referred to as the Commission) in all matters arising out of Ordinance 1993-1 of the City of Somerville. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. In any situation in which these rules do not specifically apply, the Commission or a Commissioner may exercise discretion so as to achieve a just, speedy, and inexpensive determination of the issue.

II. DEFINITION OF TERMS

The Review Committee shall consist of a minimum of three (3) Commissioners. The Review Committee shall serve as an investigator and negotiator. The Executive Director shall assign three (3) people to form a Hearing Panel and preside over each case scheduled for public hearing. Each Hearing Panel shall select a chairperson among its members.

III. JURISDICTION

The Commission has jurisdiction:

(A) To receive complaints and to initiate investigations into:

- (1) the existence of unlawful discrimination in the city which may deny or tend to deny equal access or opportunity in matters of housing (except as covered by the Somerville Fair Housing Ordinance Section 7-41 through 7-48) employment, education, contracts, purchasing, or public accommodations, on the basis of: age, ancestry, citizenship, color, disability, economic status, ethnicity, family/marital status, gender, military status, national origin, race, religion, sexual orientation, or source of income; and in connection therewith to hold administrative hearings;
- (2) any conduct or behavior which is sexually or racially harassing;
- (3) any unfair and unequal treatment which denies either a group or an individual equal protection of the law in the enjoyment and exercise of civil rights; and

- (4) the presence in the City of Somerville of prejudice, intolerance, bigotry, or other conduct or behavior which encourages and brings about misunderstanding and disrespect among all residents of the city.

(B) To attempt by negotiation to resolve all complaints over which it has jurisdiction and recommend to all appropriate governmental agencies, federal, state, or local, such action as it feels will resolve such complaints. With respect to complaints not resolved by negotiations:

- (1) To file a complaint or report of its findings with any court or government agency having jurisdiction over the matter in question;
- (2) to seek or apply remedies as enumerated in Ordinance 1993-1 section 2-243 (4) of the City of Somerville;
- (3) to use its best efforts to bring about compliance with its recommendations.

IV. COMPLAINT

(A) The Complainant may be:

- (1) Any person aggrieved by an alleged unlawful discriminatory or harassing practice, or an alleged violation of human rights;
- (2) The duly authorized representative, as designated in writing by said aggrieved;
- (3) The Commission;
- (4) Any organization, whether or not incorporated, whose purposes include the elimination of the unlawful practice which is the subject of the complaint, and whose members include persons claiming to be aggrieved by the alleged violation.

(B) Form and Filing

- (1) Complaints shall be in writing. If necessary Commission staff will assist in filing.
- (2) Complaints shall be signed under the pains and penalty of perjury.
- (3) The complaint shall contain the following:
 - a. the appropriate identification of the Complainant(s) including full name, address(es), and telephone number(s);

- b. the appropriate identification of the person(s) alleged to have violated the code of this ordinance, including full name(s), address(es), and telephone number(s);
- c. a reference to the section of City of Somerville Ordinance 1993-1 alleged to have been violated;
- d. a plain and concise statement of the alleged discriminatory act(s); and
- e. the date or dates of the alleged discriminatory acts .

(C) Time of Filing

Complaints of discriminatory practices must be filed within one hundred and eighty (180) days after their occurrence or the last date of an alleged continuing discriminatory practice.

(D) Manner of Filing

The complaint may be filed in person or by certified mail to the Commission's office.

(E) Service upon Respondent

Within twenty-one (21) days of the filing of a complaint, the Executive Director shall serve a copy of the complaint upon the Respondent either by certified mail, return receipt requested, at the Respondent's last known address or place of business, or by hand delivery by a member of the Commission staff. The complaint shall be accompanied by the following:

- (1) A notice to the Respondent that all records relating to the case under investigation must be retained until final resolution of the complaint;
- (2) A notice to the Respondent that retaliation is prohibited (MGL Ch. 151B Sec. 4) and will be cause for further action by the Commission; and
- (3) A notice to the Respondent advising him or her of his or her procedural rights and obligations under the law.

(F) Respondent's Answer in the Form of a Position Statement

- (1) The Respondent shall file a written answer to the complaint with the Commission within twenty-one (21) days of receipt of the request.
- (2) The answer shall contain appropriate identification of the Complainant(s) and Respondent(s), including, but not limited to, their names, addresses, and

representatives, if any. The Respondent shall state in the position statement. in short and plain terms the Respondent's defenses to each item asserted and shall admit or deny the allegation(s) upon which the complaint is based. If the Respondent(s) is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) the respondent(s) shall so state. Such statement shall have the effect of a denial. Any allegation not answered shall be deemed admitted. The Respondent may amend the answer for good cause at the discretion of the Hearing Commissioner at any time prior to fifteen (15) days before the initial day of the public hearing.

(G) Complainant's Rebuttal

The Complainant may file a written rebuttal to the Respondent's position statement within twenty-one (21) days of the receipt of the statement. A copy of the Complainant's rebuttal shall be sent to the Respondent by the Commission.

(H) Amendment of Complaints

A complaint may be amended as of right to cure any technical defects or omissions, including failure to swear to the complaint or to clarify or extend allegations made therein. Any such amendment shall be made at any time prior to fifteen days before the hearing date. The Respondent shall be served by regular mail with the amendments to the complaint. Amendments shall relate back to the original filing date. Amendments may be made by the Complainant, the Executive Director, the Review Committee, or the Hearing Panel.

(I) Withdrawal of Complaint

A complaint may be withdrawn by the Complainant with the consent of the Commission. A Request to Withdraw shall be in writing and signed by the Complainant or the Complainant's duly authorized representative. The chairperson of the Review Committee may grant or deny such request as the interests of justice require. All parties shall be notified by regular mail upon granting a request. The Executive Director's right to file a complaint based upon the same facts shall not be affected by any private party's withdrawal, and any such complaint shall relate back to the date of filing of the individual complaint.

(J) Extension of Time Periods

When an act is required or permitted within a specified time period under these rule or an order of the Commission, a Commissioner, designated by the chairperson(s), may:

- (1) if a request is made before the expiration of the time period, extend that period in his or her discretion, or

- (2) if a written request is made after the expiration of the time period, extend that period for good cause or if the failure to act was due to excusable neglect.

(K) Dismissal of Complaint

A case may be administratively closed for the following reasons:

- Bankruptcy of Respondent;
- Death of party;
- Inability of Commission to locate a Complainant: and
- Unreasonable refusal by a Complainant to cooperate with the processing of his/her complaint.

These reasons are not exhaustive of the possible basis for administrative closure but are most frequently cited reasons for such closures. Instances involving inability to locate a Complainant and failure to cooperate should be given special attention.

(1) Inability of the Commission to locate a Complainant:

Administrative closure for inability to locate a Complainant requires that Commission staff make good faith efforts to locate the Complainant and that documentation of such steps to be submitted to the Review Committee along with the request for closure. The necessary steps for administrative closure all of which must be appropriately documented are as follows:

- a. Issuance of a letter to the Complainant at his/her last known address by certified mail, return receipt requested. This letter must request that the Complainant contact the Commission. (If applicable, correspondence mailed to complainant must include the EEOC "33 day letter.")
Documentation: The returned Commission correspondence indicating that Complainant has moved and left no forwarding address;
- b. Contact by Commission staff with other sources in an effort to locate a current address or a phone number for the Complainant; use of current telephone directories, city directories; last known place of employment, etc. Documentation: clear annotations in the case file and statements contained within the closure request that summarize the actions taken;
- c. Attempt to contact by telephone. At least one telephone attempt during normal working hours and one during non-working hours. Documentation: clear annotations in the case file and statements contained within the closure request that summarizes the actions taken.

- (2) Unreasonable refusal by a Complainant to cooperate with the processing of his/her case

This basis for administrative closure includes failure to provide the investigator with key information, failure to submit draft interrogatories when requested by the Commission (applies only as to Complainants who have retained private counsel); and unreasonable refusal to accept a settlement offer proposed by a Respondent.

- a. Failure to provide information

Prerequisites to closures include the following:

- i. The information sought must be relevant to the investigation and must be considered significant by the investigator;
- ii. The Complainant should be sent a notification of the last opportunity to provide information, by certified mail, return receipt requested. This final notification should allow the Complainant ten (10) days to provide the requested information and should advise the Complainant that failure to provide the information will result in an administrative closure;
- iii. Unclaimed final notice letters should be followed up with a telephone call to the Complainant. If contact is made with the Complainant over the telephone, the letter should be read over the phone.

- b. Unreasonable refusal to accept a proposed settlement offer

Since the litigation process often results in damage awards far higher than what might be expected by the Complainant through informal settlement. This provision for closure should be invoked only in rare circumstances. One clear example of an appropriate closure for failure to accept a proposed settlement offer would be the refusal of a settlement proposal which offers 100% of what could be awarded a Complainant in an order issued by a hearing commissioner after public hearing. Investigative staff should confer with their supervisors in all instances involving closures for refusal to accept a proposed offer of settlement.

V. PARTIES

(A) Intervention

At any time during the proceeding, any person not originally a party to the proceeding may be permitted to intervene as a Complainant or Respondent if, in the judgment of the chairperson:

- (1) such action will assist in the orderly disposition or presentation of the case, and
- (2) such person asserts a claim or defense having common questions of law or fact with the main proceeding .

(B) Substitution

The chairperson of the Review Committee or the Hearing Panel may, upon his or her own motion or upon the motion of any party, at any time during any proceeding or investigation, make such substitution, joinder, or amendment of parties as the interests of justice and convenience may require. All parties shall be duly notified of any substitution within seven (7) days.

(C) Consolidation

The Chairperson may, upon his or her own motion or upon the motion of any party, order proceedings involving a common question of law or fact to be consolidated for investigation, conciliation, or hearing on any or all matters at issue in such proceedings.

VI. REPRESENTATION OF PARTIES

(A) Any party may be represented by legal counsel at any stage in proceedings before the Commission.

(B) After a determination is made that there is Probable Cause to credit the allegation of the Complaint. The Executive Director shall act as a counsel for the Complainant in support of the complaint during the proceedings.

(C) Upon the Complainant's motion in writing, and in the discretion of the Commission, Complainant's counsel may be designated as the agent of the Commission for the purpose of presenting the case at public hearing.

VII. DEFERRAL

(A) Whenever the Chairperson of the Review Committee has reason to believe that another agency or court having jurisdiction over the parties and the subject matter contained in the complaint tiled with the Commission. is conducting a prompt and thorough investigation of such complaint in a manner consistent with the standards and requirements of the Commission, the Review Committee may defer its investigation of

the complaint until such agency or court has completed its investigation or the complaint is resolved.

(B) If it appears that the Commission's objectives, standards and requirements have been met, the Commission may accord another agency or court's findings or resolutions substantial weight in considering the complaint before it.

(C) All parties shall be duly notified of any decision to defer the investigation.

(D) The rights of the Commission to initiate or reactivate investigation of the same complaint shall not be affected by the deferral.

(E) A complaint shall not be considered for investigation if the dispute has been settled in a court of competent jurisdiction and other administrative agencies such as civil service, labor relations board or binding arbitrations; or if another appropriate agency is handling the case. The court's final decision in the matter will serve to bar the Commission from initiating its own investigation into the allegations of the complaint.

VIII. INVESTIGATION

(A) Assignment of Investigator

Within a reasonable time after the filing of a complaint, the Executive Director will assign the complaint to a Review Committee that shall serve as an investigator and negotiator. The Executive Director shall assist with investigations as requested by the Review Committee.

(B) Notification of Rights

Within twenty-one (21) days of the filing of a complaint, the Complainant and the Respondent shall be notified in writing of their rights to representation contained in Section VI above.

(C) Confidentiality

This section is governed by Public Record Laws, MGL Chapter 66, the Fair Information Practices Act, Chapter 66A and the statutory definition of public records, MGL chapter 4, section 7 (26).

- (1) All information and documents received during the investigation and prior to the issuance of the Complaint shall be confidential and for the internal use of the Commission only, except that the Complainant, Respondent, and witnesses shall each be entitled to copies of their own affidavits or other signed documents;
- (2) Upon service upon the Respondent, the Complaint shall be a public document;
- (3) The Final Investigative Report shall be a public document; and

- (4) Upon the ultimate disposition of a case by the Commission, the investigatory
- (5) materials shall become public records to the extent that their release does not constitute an unwarranted invasion of privacy or otherwise violate the above named laws.

(D) Scope of Investigation

The Review Committee may interview witnesses, requiring the attendance of persons or the production for examination of books, papers and other tangible things, serve interrogatories on either party, convene fact-finding or negotiation conferences and depose witnesses when necessary to preserve testimony.

(E) Recommendations after Investigation

The Review Committee shall promptly investigate and, unless the complaint has been withdrawn or a Pre-Determination Settlement agreement has been signed, the Review Committee shall make recommendations after investigation. Such recommendations shall be signed by the Executive Director, the chairperson for the Review Committee, and the investigator, if involved. These recommendations shall be full and complete, shall be attached to the investigative file and shall be sent to the Complainant by certified mail, return receipt requested, to the Complainant's last known address or place of business. The Respondent shall be similarly notified. The recommendations shall include findings of fact and, with respect to each separate allegation of an unlawful practice a determination of one of the following:

- (1) No jurisdiction exists over the parties or subject matter of the complaint.
- (2) There is no Probable Cause to believe the allegations of the complaint. Within ten (10) days of receipt of such notice the Complainant may request a review of the determination by filing with the Commission a written request for reconsideration and the reasons therefor.

The Review Committee who approved the recommendation of the case shall review the original report and the materials submitted for reconsideration, and shall determine whether the case should be reopened. The Review Committee shall affirm, reverse, or modify the determination, stating his or her reasons therefor.

- (3) If the public interest so requires, the Commission may administratively close the case. See Article 4 Section (K).
- (4) There is Probable Cause to believe the allegations of the complaint. In such case, a final investigative report with written findings of fact in support of the determination will be issued and sent to both parties. If efforts at conciliation,

conference and persuasion are unsuccessful, the Review Committee may, at its discretion:

- a. certify the complaint to public hearing;
- b. with written findings and recommendations for further action, refer the matter to the Department of the Attorney General, the Mass Commission Against Discrimination or any other appropriate agency for prosecution;
- c. refer the matter to an attorney with findings and recommendations for further action; or
- d. take other appropriate action.

IX. CONCILIATION AND SETTLEMENT

(A) Agreements

When there is probable cause, the Review Committee shall attempt to achieve a just resolution of complaints and obtain assurances, where appropriate, that the respondent will satisfactorily remedy any violations of the person aggrieved and will act to prevent such violations during the proceedings.

- (1) The terms of such agreements shall be written, signed by both parties and by the Executive Director, and approved by the Chairperson of the Review Committee assigned to the case. Such agreements shall protect the interests of the Complainant, the Respondent and the public.
- (2) Such agreements shall be known as:
 - a. Pre-Determination Settlement Agreements, when signed before the Recommendations after investigation are approved;
 - b. Conciliation Agreements, when signed after the recommendations after investigation is approved; or
 - c. Consent Orders, when signed after commencement of a Public Hearing.

(B) Confidentiality of Conciliation Conference

Nothing said or done as a part of the Review Committee or the Executive Director's efforts at conciliation may be made public without the written consent of all parties involved. The written terms of any settlement agreement, however, shall be a public document unless sealed from public view by agreement of all parties and vote of the Commission.

(C) Compliance Review

The Executive Director may, from time to time, review compliance with an agreement and may, upon a finding of noncompliance, take such enforcement action as is provided for under the settlement agreement or as may otherwise be appropriate .

(D) Reopening

The Commission retains jurisdiction over the matter after execution of any agreement. Upon motion of the Complainant, the Respondent, or the Executive Director asserting that a Consent Order, Conciliation Agreement, or pre-Determination Settlement agreement has not been complied with or requires modification, the Chairpersons of the Commission may, in his or her discretion, reopen the case and certify it to a public hearing to determine whether the agreement has been complied with or requires modification and to take such further action as may be appropriate.

X. PUBLIC HEARING

(A) All hearings shall be held in accordance with the Open Meeting Law, M.G.L. Ch.39 §23A-23C and 24. Notice of every hearing is to be filed with the City Clerk and the notice or a copy of the notice must be publicly posted in the office of the Clerk at least 48 hours (including Saturdays but not Sundays or legal holidays) before the hearing.

(B) Hearing Commissioner

Upon scheduling a case for public hearing, a Hearing Commissioner shall be assigned to chair the Hearing Panel and preside over the case. At no time may a Commissioner who has been a member of the Review Committee be assigned to participate at the public hearing of that case. The Hearing Commissioner shall be designated to rule on all pre-hearing matters.

(C) Pre-hearing conference

The Hearing Panel or their designee, prior to commencement of the public hearing, may conduct a pre-hearing conference with the parties or their representatives, and may issue pre-hearing orders concerning any of the following matters:

- (1) stipulations;
- (2) discovery;
- (3) motions;
- (4) witnesses;

- (5) identification of facts and issues in dispute;
- (6) submission of legal memoranda in support of a party's position;
- (7) any other matter, which in the judgment of the Hearing Panel, is likely to expedite the case.

Members of the Hearing Panel shall be under a duty to conduct a fair hearing and to take all necessary action to avoid delay and maintain order. They shall have powers necessary to these ends, including, but not limited to, the power to:

- (1) arrange and issue notice of date, time, and place, of hearing(s) previously set;
- (2) hold conferences to settle, simplify, or establish issues in a proceeding, or consider other matters that may aid in the expeditious disposition of proceedings;
- (3) require parties to state their position with respect to various issues in connection with the proceedings;
- (4) determine the scope of discovery;
- (5) administer oaths or affirmations;
- (6) rule on motions and other procedural items;
- (7) regulate the course of the hearing and the conduct of counsel;
- (8) examine witnesses and direct witnesses to testify;
- (9) receive, rule on, and limit evidence;
- (10) fix the time for filing motions, petitions, briefs or other matters;
- (11) issue initial or interim decisions, recommendations, or final decisions;
- (12) take any action authorized by the Ordinance or these Procedures

(D) Discovery

- (1) Parties shall be allowed to conduct reasonable discovery. A request for discovery shall be directed in writing to the Commission. The Hearing Panel shall issue an order to respond to discovery as requested, or he or she may modify the request as the interests of justice may require. In no case shall discovery exceed thirty (30) interrogatories. A discovery order shall be responded to in full within thirty (30)

days after mailing or shall be objected to, with specific reasons stated, within thirty (30) days after mailing.

(2) Discovery available to the parties shall include

- a. Interrogatories;
- b. Requests for Admissions;
- c. Requests for Documents.

(3) Noncompliance with a discovery order shall constitute an admission that the interrogatories or requests for admissions, if answered, would have established facts in accordance with the claim of the requesting party.

(E) Continuances

Any party requesting a continuance shall file a written request with the Commission and shall provide all other parties with a copy of the request. The Hearing Panel shall grant or deny the request as the interests of justice require.

(F) Default

(1) Entry of Default Order

Whenever any party properly served with a notice of public hearing fails to obtain a continuance and fails to appear, whether in person or by representative, the Hearing Panel shall enter such party's default. Notice of default shall be sent to all parties and their counsel.

(2) Vacating Entry of Default

Within fifteen (15) days after entry of default, upon written request, the Hearing Panel may vacate the default and reopen the case for good cause shown.

(3) Final Commission Order

Thirty (30) days after entry of default, if there is no request by the party in default, the Hearing Panel shall report to the full Commission pursuant to Section XII(r) below.

(G) Transcript and Record

- (1) All testimony and arguments offered at a public hearing shall either be transcribed by a stenographer retained by the parties or recorded by electronic equipment.

- (2) Any party to a hearing may have a private stenographer present at any hearing provided that a copy of any such private transcript be furnished to the Commission within twenty (20) days of the hearing.
- (3) A party desiring a copy of the electronic tape of a hearing shall do so request in writing and bear the expense of copying waived in whole or in part. If a party is indigent, the expenses shall be waived in whole or in part.
- (4) In addition to the tape or written transcript of the hearing, the record shall consist of the petition, answer, stipulations, exhibits in evidence, and any motion, and the dispositions thereof, filed after certification to public hearing.

(H) Stipulations

Written stipulations may be introduced into evidence if signed by the persons sought to be bound thereby by their representatives. Oral stipulations may be made on the record during a public hearing.

(I) Evidence

- (1) So far as is practicable and as the interests of justice require, the Commission shall follow the rules of evidence prevailing in the courts of the Commonwealth. However, the Commission shall not be bound by the rules of evidence observed by courts, except for the rules of privilege recognized by law.
- (2) The Commission adopts Rule 803(8) of the Federal Rules of Evidence which permits as an exception to the hearsay rule, the admissions of records, reports, statements or data compilations of public agencies setting forth factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of the information indicates a lack of trustworthiness.

(J) Administrative Notice

The Commission may take administrative notice of matters as might be judicially noticed by the courts of the United States or of the Commonwealth and of technical or general facts within its specialized areas of knowledge.

(K) Oral Argument

The Commission may allow the parties reasonable time for oral argument either prior to or at the close of evidence presented during the hearing.

(L) Witnesses

Either party or the Hearing Panel may call witnesses to testify during the proceeding. Each party and the Hearing Panel shall have the opportunity to cross-examine any witnesses called to testify.

(M) Briefs and Proposed Finding of Facts

Briefs and proposed findings of fact may be filed by parties or by any interested persons before or during the course of a hearing or within such time thereafter as the hearing committee may designate.

(N) Other submission

The Hearing Panel may allow the parties, after a showing of good cause, to file evidentiary documents or exhibits within a reasonable time after completion of the hearing. Copies of any document or exhibit which is allowed to be so filed shall be sent to all parties. The Hearing Panel may also require, on his or her own motion, that the parties file evidentiary documents or exhibits subsequent to the completion of the hearing.

(O) Hearing Panel's Reports

(1) The Hearing Panel shall report promptly to the Commission his or her findings, conclusions, and recommendations, together with a record of the proceeding before the panel.

(2) Contents of Report. The report of the Hearing Commissioner shall set forth:

- a. A concise statement of the case, including a citation of each section of the Human Rights Ordinance found to have been violated by the respondent;
- b. Rulings on admission of evidence and other procedural matters, which may be set forth by reference to the pages of the transcript wherein such rulings are recorded;
- c. Finding of fact;
- d. Conclusions of law; and
- e. Recommended disposition of the matter

All reports shall become a part of the record and shall be filed with the Commission, which shall serve copies thereof upon the Respondent and Executive Director. The reports of the Hearing Panel shall be maintained in accordance with the Public Records Law. (M.G.L. Ch.66 §3-9.)

(P) Settlement after Commencement of Public Hearing

In cases settled after the commencement of public hearings, the Hearing Panel, in its discretion, may assess costs including but not limited to sheriff's fees and stenographer services to any or all parties.

XI. Summons

(A) Summons power shall be exercised by the Hearing Panel of the Commission.

(B) The Hearing Panel may compel the attendance and testimony of a witness and the production of evidence at any point in the investigative process.

(C) Any party may compel the attendance and testimony of a witness at the public hearing and production of evidence by filing a request with a Hearing Panel for a summons as authorized by the City of Somerville Ordinance 1993-1. Fees and other costs in connection with a summons shall normally be borne by the requesting party, although the Hearing Panel shall waive such fees and costs if the party is indigent or for good cause.

(D) Any witness summoned may request in writing that the summons be vacated or modified. The Hearing Panel shall review the summons and, after such investigation as they consider appropriate, may grant the request in whole or in part if the interests of fairness and justice so require.

(E) Upon the failure of any person to comply with a summons issued pursuant to these regulations, and not vacated or modified, the Hearing Panel may apply to an appropriate state or municipal court for an order requiring compliance .

XII. PROCEDURE ON APPEAL FROM HEARING COMMISSIONER'S REPORT

(A) Procedure to Object to Report of Hearing Commissioner

Any party objecting to the findings or recommendations of a Hearing Panel shall file a brief appeal addressed to the Commission within twenty (20) days after the service of a copy of the Hearing Panel's report or within such other longer or shorter time as may be reasonably fixed by the Chairperson. A brief opposing the appeal may be filed in response to a brief on appeal within twenty (20) days after the filing of a brief on appeal or within such other longer or shorter time as may be reasonably fixed by the Chairperson.

(B) Waiver of Objections

A party will be conclusively deemed to have waived all objections to the findings, conclusions, and recommendations of the Hearing Panel, and to have stipulated to the waiver of oral argument and submission of briefs unless he or she files an appeal as provided in subsection XII (A).

(C) Assignment of Appeals

If there is an appeal from the findings and recommendations of a Hearing Panel, the Commission shall either hear the matter itself or assign it to an appeal panel of at least three members of the Commission, to be designated by the Chairpersons of the Commission.

(D) Procedure Before an Appeal Panel of the Commission

If a matter is heard before an appeal panel of the Commission, such panel may determine the matter upon the record and the briefs before it. It may take further evidence, or may remand the case to the Hearing Panel for the taking of further evidence. The appeal panel shall promptly report its findings of fact, conclusions of law, and recommendations of the Commission.

(E) Briefs on Appeal

(1) The briefs on appeal shall contain all of the following:

- a. a short statement of the case;
- b. a summary of the basic positions of the filing party;
- c. the grounds upon which the appeal rests; and
- d. the argument in support of the appeal with appropriate references to the record and legal authorities.

(2) There may also be included specific findings and conclusions proposed in lieu of those from which the appeal is being taken and any proposed additional findings and conclusions.

(3) Appeal from the form of recommended order shall specify the portions thereof from which the appeal is being taken, and may set forth a form of order suggested in lieu of that recommended by the Hearing Panel.

(F) Briefs Opposing Appeals

Briefs opposing appeals shall generally follow the same style prescribed for briefs on appeal, but may omit a statement of the case so far as it is correctly stated in the brief on appeal.

(G) Copies

Three copies of each brief shall be filed with the Commission in addition to the copies served on the parties.

(H) Action by Commission

The Commission may adopt the findings of fact submitted by the Hearing Panel in its report, or revise any findings which it determines to be erroneous, paying due respect to the role of the Hearing Panel as the arbiter of the credibility of the testimony presented at the hearing. The Commission may adopt or modify any recommendations of the Hearing Panel or appeal panel. Whenever the Commission modifies the findings or recommendations of the Hearing Panel or the panel appeal, it shall state the reasons therefor in its vote or in a memorandum.

(I) Non-Participation by Commission Member

The Commissioners, if any, who decided probable cause or who acted as members of the Hearing Panel shall not participate in any subsequent consideration or decision of the matter.

(J) Dismissal of Proceeding

In the event that the Commission determines that a proceeding should be dismissed, the Executive Director shall notify both parties.

XIII. REVIEW BY COMMISSION WHEN THERE HAS BEEN NO APPEAL

When the time for filing an appeal under Section XI(A) has expired, and neither the Executive Director, the Complainant nor the Respondent has filed an appeal with the Commission, the Commission may review the case. In the event the Commission makes a preliminary determination that the decision of the Hearing Panel should not be affirmed, it shall give the parties appropriate notice thereof and an opportunity to file briefs, and the Commission may then proceed to take such action as it could have taken had an appeal been filed.